

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

XI KONG,

Plaintiff,

Case No. 2:15-cv-01498-JCM-CWH

ORDER

V.

SECRETARY JEH JOHNSON, et al..

Defendants.

Presently before the court is defendants' motion to dismiss the complaint as moot pursuant to FED. R. CIV. P. 12(b)(1) because there is no longer a present controversy upon which this court may grant relief. (Doc. # 5 at 2). Defendants represent that on August 26, 2015, USCIS issued a decision denying plaintiff's petition for a writ of mandamus regarding the instant matter. (*Id.* at 1–2). Plaintiff has not filed a response.

19 Also before the court is plaintiff's notice of voluntary dismissal pursuant to FED. R. CIV. P.
20 41(a)(1)(A)(i). (Doc. # 6). Plaintiff seeks dismissal of his case on the basis that the defendant has
21 not served an answer or a motion for summary judgment. (*Id.* at 1).

22 FED. R. CIV. P. 41(a)(1)(A)(i) allows a plaintiff to voluntarily dismiss a claim without court
23 order “by filing a notice of dismissal before the opposing party serves either ran answer or a motion
24 for summary judgment.”

25 Defendants have not filed an answer nor have they filed a motion for summary judgment.
26 Therefore, dismissal under FED. R. CIV. P. 41(a)(1)(A)(i) is proper.

27 As plaintiff has voluntarily dismissed the present action, defendants' motion to dismiss is
28 denied as moot.

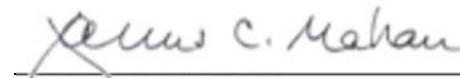
1 Accordingly,

2 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this action, case number
3 2:15-cv-01498-JCM-CWH be, and the same hereby is, dismissed without prejudice.

4 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendants motion to
5 dismiss (doc. # 5) be, and the same hereby is, DENIED as moot.

6 IT IS FURTHER ORDERED that the clerk shall enter judgment accordingly and close the
7 case.

8 DATED THIS 5th day of November, 2015.

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10 JAMES C. MAHAN
11 UNITED STATES DISTRICT JUDGE

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